

5391

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 18, 2011

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Introduced by M. of A. McDONOUGH -- read once and referred to the  
Committee on Education

AN ACT to amend the education law, in relation to prohibiting bullying  
on school property; and to amend the penal law, in relation to estab-  
lishing the crime of aggravated harassment of teachers and school  
personnel

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     "schools as safe harbors act".  
3     S 2. Legislative intent. In recent years, the state legislature has  
4     taken several steps to ensure that school pupils, teachers and other  
5     personnel are provided with a safe and secure learning environment on  
6     all school property. Through the enactment of provisions requiring the  
7     fingerprinting of a school district's prospective employees and the  
8     enactment of the Safe Schools Against Violence in Education Act, the  
9     legislature has ensured the increased safety of our schools. However,  
10    to address concerns that harassment of pupils and school personnel  
11    through acts of bullying can be both disruptive to the learning process  
12    and harmful, mentally and/or physically, to intended victims, the legis-  
13    lature finds that enactment of this legislation to prohibit bullying on  
14    school property is necessary and appropriate to further ensure that New  
15    York state's public schools be made as safe as possible.  
16    S 3. Section 801-a of the education law, as added by chapter 181 of  
17    the laws of 2000, is amended to read as follows:  
18    S 801-a. Instruction in civility, citizenship and character education.  
19    The regents shall ensure that the course of instruction in grades  
20    kindergarten through twelve includes a component on civility, citizen-  
21    ship and character education. Such component shall instruct students on  
22    the principles of honesty, tolerance, personal responsibility, respect  
23    for others, observance of laws and rules, courtesy, dignity and other

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD09153-01-1

1 traits which will enhance the quality of their experiences in, and  
2 contributions to, the community. SUCH COMPONENT SHALL ALSO ADDRESS  
3 METHODS OF DISCOURAGING ACTS OF BULLYING, AS DEFINED IN SUBDIVISION ONE  
4 OF SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER, AGAINST FELLOW  
5 STUDENTS. The regents shall determine how to incorporate such component  
6 in existing curricula and the commissioner shall promulgate any regu-  
7 lations needed to carry out such determination of the regents.

8 S 4. Section 801-a of the education law, as added by chapter 482 of  
9 the laws of 2010, is amended to read as follows:

10 S 801-a. Instruction in civility, citizenship and character education.  
11 The regents shall ensure that the course of instruction in grades  
12 kindergarten through twelve includes a component on civility, citizen-  
13 ship and character education. Such component shall instruct students on  
14 the principles of honesty, tolerance, personal responsibility, respect  
15 for others, observance of laws and rules, courtesy, dignity and other  
16 traits which will enhance the quality of their experiences in, and  
17 contributions to, the community. The regents shall determine how to  
18 incorporate such component in existing curricula and the commissioner  
19 shall promulgate any regulations needed to carry out such determination  
20 of the regents. SUCH COMPONENT SHALL ALSO ADDRESS METHODS OF DISCOURAG-  
21 ING ACTS OF BULLYING, AS DEFINED IN SUBDIVISION ONE OF SECTION  
22 TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER, AGAINST FELLOW STUDENTS. For  
23 the purposes of this section, "tolerance," "respect for others" and  
24 "dignity" shall include awareness and sensitivity to discrimination or  
25 harassment and civility in the relations of people of different races,  
26 weights, national origins, ethnic groups, religions, religious prac-  
27 tices, mental or physical abilities, sexual orientations, genders, and  
28 sexes.

29 S 5. Subdivision 2 of section 2801 of the education law is amended by  
30 adding a new paragraph a-1 to read as follows:

31 A-1. PROVISIONS PROHIBITING BULLYING ON SCHOOL PROPERTY, INCLUDING A  
32 SCHOOL FUNCTION, PURSUANT TO SECTION TWENTY-EIGHT HUNDRED THREE OF THIS  
33 ARTICLE;

34 S 6. Subdivision 2 of section 2801 of the education law is amended by  
35 adding a new paragraph f-1 to read as follows:

36 F-1. WHEN ANY SCHOOL EMPLOYEE HAVING REASONABLE CAUSE TO SUSPECT THAT  
37 A STUDENT HAS COMMITTED AN ACT OF BULLYING, AS DEFINED IN SECTION TWEN-  
38 TY-EIGHT HUNDRED THREE OF THIS ARTICLE, THE SCHOOL EMPLOYEE SHALL REPORT  
39 SUCH INCIDENT TO THE PRINCIPAL, OR DESIGNEE THEREOF, WHO IN TURN SHALL  
40 REPORT SUCH INCIDENT TO THE SUPERINTENDENT, UPON A DETERMINATION BY THE  
41 PRINCIPAL, OR DESIGNEE THEREOF, THAT THERE IS A REASONABLE SUSPICION  
42 THAT THE ACT OCCURRED. FAILURE OF AN EMPLOYEE TO MAKE A REPORT PURSUANT  
43 TO THIS PARAGRAPH MAY NOT BE THE BASIS FOR ANY DISCIPLINARY ACTION OR  
44 PROFESSIONAL MISCONDUCT CHARGE AGAINST THE EMPLOYEE;

45 S 7. The education law is amended by adding a new section 2803 to read  
46 as follows:

47 S 2803. BULLYING PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE  
48 FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

49 A. "PUBLIC SCHOOL" MEANS:

50 (I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL, KINDERGARTEN OR PRE-KIN-  
51 DERGARTEN PROGRAM, ADULT OR CONTINUING EDUCATION PROGRAM OR OTHER EDUCA-  
52 TIONAL PROGRAM OPERATED BY A SCHOOL DISTRICT, CHARTER SCHOOL, BOARD OF  
53 COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTEN-  
54 SION BOARDS; AND

55 (II) A SCHOOL OR EDUCATIONAL PROGRAM THAT SERVES STUDENTS IN ANY OF  
56 GRADES KINDERGARTEN THROUGH TWELVE AND IS OPERATED BY THE DEPARTMENT, OR

1 IS OPERATED OR SUPERVISED BY ANOTHER STATE AGENCY OR A POLITICAL SUBDI-  
2 VISION AND IS SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED TWELVE OF  
3 THIS CHAPTER.

4 B. "PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM" MEANS AN APPROVED  
5 PROVIDER OF SPECIAL EDUCATION PROGRAMS AND SERVICES UNDER SECTION  
6 FORTY-FOUR HUNDRED TEN OF THIS CHAPTER, AN APPROVED PRIVATE RESIDENTIAL  
7 OR NON-RESIDENTIAL SCHOOL FOR THE PROVISION OF SPECIAL SERVICES OR  
8 PROGRAMS PURSUANT TO SUBDIVISION TWO OF SECTION FORTY-FOUR HUNDRED ONE  
9 OF THIS CHAPTER, A STATE-SUPPORTED SCHOOL SUBJECT TO THE PROVISIONS OF  
10 ARTICLE EIGHTY-FIVE OF THIS CHAPTER OR ANY OTHER AGENCY OR ENTITY THAT  
11 PROVIDES SPECIAL EDUCATION PROGRAMS OR SERVICES PURSUANT TO THE  
12 PROVISIONS OF ARTICLE EIGHTY-ONE OR EIGHTY-NINE OF THIS CHAPTER.

13 C. "SCHOOL PROPERTY" MEANS IN OR WITHIN ANY BUILDING, STRUCTURE,  
14 ATHLETIC PLAYING FIELD, PLAYGROUND, PARKING LOT OR LAND CONTAINED WITHIN  
15 THE REAL PROPERTY BOUNDARY LINE OF A PUBLIC SCHOOL OR A PUBLICLY FUNDED  
16 SPECIAL EDUCATION PROGRAM; OR IN OR ON A SCHOOL BUS, AS DEFINED IN  
17 SECTION ONE HUNDRED FORTY-TWO OF THE VEHICLE AND TRAFFIC LAW; AND A  
18 "SCHOOL FUNCTION" MEANS A SCHOOL SPONSORED EXTRA-CURRICULAR EVENT OR  
19 ACTIVITY.

20 D. "BULLYING" MEANS THREATENING, STALKING OR SEEKING TO COERCE OR  
21 COMPEL A PERSON TO DO SOMETHING; ENGAGING IN VERBAL OR PHYSICAL CONDUCT  
22 THAT THREATENS ANOTHER WITH HARM, INCLUDING INTIMIDATION THROUGH THE USE  
23 OF EPITHETS OR SLURS INVOLVING RACE, ETHNICITY, NATIONAL ORIGIN, RELI-  
24 GION, RELIGIOUS PRACTICES, GENDER, SEXUAL ORIENTATION, OR DISABILITY.

25 2. NO STUDENT SHALL BE SUBJECT TO BULLYING BY ANY STUDENT OF A PUBLIC  
26 SCHOOL OR PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM.

27 3. A. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF THIS  
28 SECTION IN A PUBLIC SCHOOL OR ON SCHOOL PROPERTY SHALL BE SUBJECT TO  
29 DISCIPLINARY ACTION IN ACCORDANCE WITH THE DISTRICT'S CODE OF CONDUCT  
30 ADOPTED PURSUANT TO SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE AND  
31 THE DISCIPLINE PROCEDURES APPLICABLE TO STUDENTS OR EMPLOYEES OF THE  
32 PUBLIC SCHOOL. ANY PERSON FOUND TO BE IN VIOLATION OF SUBDIVISION TWO OF  
33 THIS SECTION IN A PUBLICLY FUNDED SPECIAL EDUCATION PROGRAM SHALL BE  
34 SUBJECT TO DISCIPLINE UNDER THE POLICIES AND PROCEDURES OF SUCH PROGRAM  
35 GOVERNING STUDENT CONDUCT OR EMPLOYEE DISCIPLINE.

36 B. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE A PRIVATE  
37 CAUSE OF ACTION.

38 4. NOTHING IN THIS SECTION SHALL APPLY, OR BE CONSTRUED TO APPLY, TO  
39 PRIVATE, RELIGIOUS OR DENOMINATIONAL EDUCATIONAL INSTITUTIONS. NOR SHALL  
40 THIS SECTION PRECLUDE OR LIMIT, OR BE PERCEIVED TO PRECLUDE OR LIMIT,  
41 ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL  
42 ORDINANCE, LAW, RULE OR REGULATION.

43 5. A PLAIN-LANGUAGE, AGE-APPROPRIATE DESCRIPTION OF THE POLICIES  
44 OUTLINED IN SUBDIVISION TWO OF THIS SECTION SHALL BE DISTRIBUTED TO  
45 EMPLOYEES, STUDENTS AND PARENTS OF EACH PUBLIC SCHOOL OR PUBLICLY-FUNDED  
46 SPECIAL EDUCATION PROGRAM ON AT LEAST AN ANNUAL BASIS. IN THE CASE OF  
47 PUBLIC SCHOOLS, SUCH REQUIREMENT SHALL BE MET BY INCLUDING SUCH  
48 DESCRIPTION IN THE SUMMARY OF THE CODE OF CONDUCT PROVIDED TO EACH  
49 STUDENT AND MAILED TO PARENTS PURSUANT TO SUBDIVISION FOUR OF SECTION  
50 TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE.

51 6. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE, AND IF ANY COURT  
52 OF COMPETENT JURISDICTION DECLARES ANY PHRASE, CLAUSE, SENTENCE OR  
53 PROVISION OF THIS ARTICLE TO BE INVALID, OR ITS APPLICABILITY TO ANY  
54 GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE, IS DECLARED INVALID, THE  
55 REMAINDER OF THIS ARTICLE AND ITS RELEVANT APPLICABILITY SHALL NOT BE  
56 AFFECTED.

1 S 8. Section 3028-c of the education law, as added by chapter 181 of  
2 the laws of 2000, is amended to read as follows:

3 S 3028-c. Protection of school employees who report acts of BULLYING  
4 OR violence and weapons possession. Any school employee having reason-  
5 able cause to suspect that a person has committed an act of BULLYING AS  
6 SUCH TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAP-  
7 TER OR violence while in or on school property, or having reasonable  
8 cause to suspect that a person has committed an act of BULLYING AS SUCH  
9 TERM IS DEFINED IN SECTION TWENTY-EIGHT HUNDRED THREE OF THIS CHAPTER OR  
10 violence upon a student, school employee or volunteer either upon school  
11 grounds or elsewhere, or having reasonable cause to suspect that a  
12 person has brought a gun, knife, bomb or other instrument capable of or  
13 that appears capable of causing death or physical injury upon school  
14 grounds who in good faith reports such information to school officials,  
15 to the commissioner, or to law enforcement authorities, shall have immu-  
16 nity from any civil liability that may arise from the making of such  
17 report, and no school district or school district employee shall take,  
18 request or cause a retaliatory action against any such employee who  
19 makes such report.

20 S 9. The penal law is amended by adding a new section 240.33 to read  
21 as follows:

22 S 240.33 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL.

23 A PERSON IS GUILTY OF AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL  
24 PERSONNEL WHEN, WITH INTENT TO HARASS, ANNOY OR ALARM A PERSON WHOM HE  
25 OR SHE KNOWS OR REASONABLY SHOULD KNOW TO BE A TEACHER, ADMINISTRATOR OR  
26 OTHER STAFF MEMBER OF A PUBLIC OR PRIVATE ELEMENTARY, INTERMEDIATE,  
27 JUNIOR HIGH, VOCATIONAL OR HIGH SCHOOL, ENGAGED IN THE COURSE OF HIS OR  
28 HER EMPLOYMENT, HE OR SHE STRIKES, SHOVES OR KICKS SUCH TEACHER, ADMIN-  
29 ISTRATOR OR OTHER STAFF MEMBER, AND WHEN SUCH CONDUCT TAKES PLACE ON  
30 SCHOOL PROPERTY AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE  
31 EDUCATION LAW WHERE SUCH TEACHER, ADMINISTRATOR OR OTHER STAFF MEMBER IS  
32 EMPLOYED OR ASSIGNED ON THE DATE OF SUCH CONDUCT.

33 AGGRAVATED HARASSMENT OF TEACHERS AND SCHOOL PERSONNEL IS A CLASS B  
34 MISDEMEANOR.

35 S 10. This act shall take effect on the first of September next  
36 succeeding the date on which it shall have become a law provided that  
37 section four of this act shall take effect on the same date and in the  
38 same manner as chapter 482 of the laws of 2010, takes effect.